IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1175 OF 2004

Smt.Parvin w/o Jahagir Ferzandi, Petitioner
Vs
1. Mr Rustom Khaikhushru Ferzandi
and ors. Respondents

Mr S.M.Gorwadkar, for the petitioner.
Mr Manoj Dalvi, for the respondents.

CORAM : D.B.BHOSALE, J.

DATE : FEBRUARY 18, 2005.

P.C.

1. Rule. Returnable forthwith. Mr Dalvi, learned counsel, waives service for the respondents. By consent, rule is heard finally.

2. This petition is directed against the order dated 20.11.2003 passed below Exhibit-34-application in Regular Civil Suit No.1224 of 1995. Exhibit-34 application was filed by the petitioner for setting aside "No W.S. order" dated 22.6.2001. The said application was rejected by the following order:

> "Perused application and say filed on it. Heard both sides. Defendant has filed this application after long delay. It has caused

delay to the proceedings. No satisfactory reason to condone such long delay. Hence, application is rejected."

3. I heard the learned counsel appearing for the parties and perused the material placed before me. The petitioner - widow filed Exhibit-34 application stating therein that during pendency of the suit her husband expired on 23.11.1997. Thereafter, her mother was suffering from cancer for quite some time. The suit was filed by the respondent for injunction simpliciter. Keeping that all in view and considering the submissions made by the learned counsel for the respondent, who, though initially opposed this petition, ultimately prayed for saddling heavy cost on the petitioner for condonation of delay, I am inclined to allow this petition. Rule is, accordingly, made absolute in the following terms.

(a) The impugned order dated 20.11.2003 is set aside. Delay in filing written statement stands condoned subject to payment of cost of Rs.7500/- by the petitioner to respondent no.1 within two weeks from today and obtain receipt thereof and produce a copy of the same before the trial Court. The petitioner

is allowed to file written statement within four weeks from today.

(b) Hearing of the suit is expedited. Rule is, accordingly, disposed of.

(D.B.Bhosale, J.)